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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD  
CIVIL REVISION APPLICATION No 1293 of 1996  
For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgement?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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CHAMANBHAI KADVABHAI PATEL

Versus

LIMBABHAI LAXMANBHAI  
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Appearance:

MR AK CLERK for Petitioner  
MR DU SHAH for Respondent No. 1  
Mr.I.M. Pandya, Assistant GOVERNMENT PLEADER,  
for Respondent No. 5, 6  
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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/07/2000

ORAL JUDGEMENT

1. Present Revision Application has been filed by the original plaintiff of Civil Suit No.1285 of 1996, which is pending in the Court of Civil Judge (S.D.), Rajkot. In the said suit, present respondents 3 to 10 were allowed to be joined as parties to the said suit under Order I Rule 10 CPC by an order below Exhibits 11, 13 and 19. The learned trial Judge, by order dated 14th August, 1996, allowed the said three applications and the applicants of those applications were allowed to be joined as party defendants in the said suit. Aforesaid order is impugned at the instance of the original

plaintiff in the present revision application.

2. In the aforesaid suit, it is the case of the present plaintiff that he is in possession and cultivating the disputed land situated at Survey No.393, admeasuring 10 acres and 16 gunthas. According to him, he is apprehending trespass over his land by some trespassers and land grabbers and, therefore, he had prayed for police protection so that he can prevent trespassing over the said land by land-grabbers. It is prayed in the suit that mandatory injunction may be granted, directing the defendants of the suit (State of Gujarat and Commissioner of Police) to provide police protection. The aforesaid relief is the only substantive relief in paragraph 20(A) of the plaint. The aforesaid suit is pending before the learned trial Judge. In the said suit, three applications were given, i.e. Exhibits 11, 13 and 19 and as per the applicants of those applications, they were required to be joined as parties to the suit as they are directly interested in the result of the aforesaid proceedings. In Application, Exhibit 19, the applicant stated that the plaintiff has not stated correct facts in the suit. According to the applicants, under the guise of Police protection, the plaintiff wants to enter upon the suit land, i.e. Survey No.393, which belongs to the applicants. In the aforesaid application at Exhibit 11, the applicants have pointed out in paragraph 4 as to how they are concerned with the aforesaid disputed land, i.e. Survey No.393. They have stated in the application that they are the owners of Survey No.393, and are in possession thereof. On the aforesaid ground, it was prayed that they are proper parties to the aforesaid suit and, therefore, they should be allowed to be joined under the provisions of Order 1 Rule 10, CPC.

3. The trial Judge, by his Order dated 14.8.1996, allowed the applications at Exhibits 11, 13 and 19 and the applicants of those applications were allowed to be joined as party-defendants in the suit. The aforesaid order has been challenged by the original plaintiff in this revision application.

4. At the time of hearing of this Revision Application, Mr.A.K. Clerk, learned Advocate for the petitioner-original plaintiff, stated that the order of the trial court, by which the applications for joining party are granted, is without jurisdiction. In his submission, the only prayer in the suit is to get Police help so that the trespassers may be prevented from trespassing upon his land. He further submitted that the

plaintiff has not asked for any relief against the applicants and, therefore, since the relief is asked only against the State Government and D.S.P., the applicants are not necessary or proper parties in the suit. He also submitted that it is for the plaintiff to join the defendants, who, according to him, are the relevant parties to the suit and, therefore, in his submission, the applicants should not have been allowed to be joined against the wishes of the plaintiff.

5. Against the aforesaid argument, Mr.D.U. Shah, learned Advocate for some of the respondents, who were joined as parties to the suit, submitted that under the guise of aforesaid prayer, the plaintiff really wants to snatch away the possession of the land of the applicants and he wants to enter upon the suit land which is in possession and ownership of the applicants with the help of Police. He submitted that various litigations have been gone into between various parties regarding Survey No.393 and that since so far as the disputed survey number is concerned, since they have got direct interest in the same as they are claiming ownership and possession, unless they are joined as parties in the said suit, they will not be in a position to point out correct facts and not only that, if any prayer is granted in their absence in the suit, it will adversely affect their right, title and interest in the suit property. He, therefore, submitted that this Court, while exercising revisional jurisdiction under Section 115, may not set aside the order of the trial court, which is passed after considering the relevant facts and circumstances of the case.

6. I have heard the arguments of both the sides and I have gone through the impugned order passed by the learned trial Judge. It is not in dispute that so far as the issue involved in the suit is concerned, it is regarding Survey No.393. The parties to the application at Exhibits 11, 13 and 19 are claiming to be in possession and also claiming to be the owners of the part of Survey No.393. It is no doubt true that the plaintiff is in the position of dominus litis. However, if parties are directly concerned with the proceedings before the Court, they are required to be joined either as necessary parties, or, in any case, as proper parties to the suit. If the parties who are required to have been joined or ought to have been joined are not joined, then certainly such parties can take recourse to the provisions of Order 1 Rule 10 CPC. Considering the controversy which is part and parcel of the suit in question, it cannot be said that the applicants, who wanted to be joined as parties,

are not having any direct interest in the subject matter. It cannot be said that their presence is academic and they have got only commercial interest. In fact, they are directly and substantially concerned with the pending suit in which the very Survey Number 393 is involved. The plaintiff's prayer in the suit is to give police help so that he can make use of his property, i.e. Survey No.393, and make construction with the help of the Police and if according to the owners of the aforesaid Survey Numbers, they are directly interested in the said proceedings, their presence, therefore, cannot be said to be not necessary or proper in the suit. The learned trial Judge has considered the aforesaid aspect in detail in the judgment. It, therefore, cannot be said that the parties, who are joined in the suit, have not got any direct interest in the subject matter and it is not open for the plaintiff to substantiate his say only by reading the prayer in the plaint, which may, at first look, appear a simpliciter suit against the State Government. But, if the controversy is examined in detail, it is apparent that the interests of the applicants are definitely involved in the disputed property. It cannot be said, therefore, that the trial Judge has committed any error of jurisdiction in allowing them to be joined as parties to the suit.

7. Mr.I.M.Pandya, learned AGP, appearing on behalf of the State, also submitted that the learned trial Judge has properly exercised his jurisdiction looking to the facts and circumstances of the case. The said exercise of jurisdiction cannot be said to be an exercise with an arbitrariness or caprice. He has also accordingly supported the order of the trial court.

8. Considering the aforesaid aspects and considering the controversy in question, I do not find any substance in this Revision Application and it cannot be said that the applicants have been joined as parties even though they have no interest in the subject matter of the suit. In that view of the matter, there is no substance in this Revision Application and the same is accordingly dismissed and Rule is discharged with no order as to costs. Interim relief, if any, shall stand vacated. It is clarified that if interim injunction application is pending, whatever observations made in this order may not be taken into consideration and these observations are made only with regard to the application under Order 1 Rule 10 CPC.

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(apj)